In the Supreme Court

OF THE

United States

JANUARY TERM, 1941

No.

McLAUGHLIN LAND AND LIVESTOCK COMPANY (a corporation),
Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE DISTRICT COURT OF THE STATE OF CALIFORNIA.

The opinion and decision of the District Court of Appeal of the State of California which petitioner seeks to have reviewed herein is reported in Volume 102 Cal. App. Dec. at page 592, 105 Pac. (2d) page 607. Said opinion is dated September 16, 1940.

II.

JURISDICTION.

This petition is filed in accordance with Rule 38 of this Court.

The statutory provision believed to sustain the jurisdiction of this Court is Section 237 of the Judicial Code (28 U. S. C. A. 344).

The statute of the United States involved herein is Section 75 of the Bankruptcy Act, 47 Stat. 1470, 11 U. S. C. A. Sec. 203. This statute was enacted in recognition of the general economic conditions detrimental to the interests of agricultural debtors. Its purpose was to afford to debtors, however distressed, a breathing spell within which to seek an agreement with their creditors and a composition, or extension of the maturity of their obligations. (*Paradise Land and Livestock Co. v. Federal Land Bank of Berkeley,* 108 Fed. (2d) 832; *John Hancock Mutual Life Ins. Co. v. Bartels,* 60 Sup. Ct. 221, 84 L. ed. 154.)

III.

STATEMENT OF THE CASE.

A brief summary of the case will be found in the petition herein. (pp. 2 to 6.) Repetition thereof will be avoided as far as possible.

In the year 1932 and at the height of the depression petitioner found itself in extraordinary financial distress while in possession of farm property ordinarily of exceptional value.

In the judgment of respondent this property, one year previously, had been deemed ample security to justify a loan to petitioner of the sum of $173,800.00. This loan was evidenced by the promissory note of petitioner.

Upon the inability of petitioner to pay this note, and within one year after the execution thereof, the corporate trustee of respondent noticed this valuable property for sale pursuant to the terms of the deed of trust executed by petitioner to secure the obligation. The validity of that alleged sale which respondent claims to have occurred on March 27, 1932, has been since vigorously disputed by petitioner.

No action to perfect its title has ever been instituted by respondent. The latter has, nevertheless, repeatedly attempted to dispossess petitioner. (102 Cal. Dec. 592, 105 Pac. (2d) 607.) Following the alleged foreclosure sale, petitioner successfully withstood two actions commenced by respondent to eject petitioner from the property. (R. T. 389-390; 22 Cal. App. (2d) 411.) These two actions, as well as the action here involved, were commenced by respondent pursuant to Section 1161(a) California Code of Civil Procedure. The section provides for the removal of a person continuing in possession of real property:

> "when the property has been *duly* sold upon foreclosure by proceedings taken as prescribed in this code * * * and the *title* under the foreclosure has been *duly perfected.*"

In another action judgment was rendered in favor of respondent and against petitioner for the

claimed balance due upon the foregoing loan after the allowance of a credit in the sum of $80,000.00 on account of the bid which respondent claims to have made for said property at the time of said alleged sale. This particular judgment determined no issue as to the validity of the alleged trustee's sale or the bank's ownership of said property. (R. T. 219-223.)

The foregoing situation summarizes the distress of petitioner and its status on March 9, 1936. On that date it filed its proceedings under Section 75 of the Bankruptcy Act in the United States District Court in and for the Northern District of California.

As a necessary judicial fact material to such proceedings, the debtor alleged that it was a farmer. (R. T. 94-95.) The respondent bank denied this allegation. (R. T. 93.) Upon reference, the special master found that petitioner was not a farmer (R. T. 122), and recommended dismissal of the proceedings. (R. T. 125.) This finding and recommendation was adopted by the United States District Court. (R. T. 135.)

The judgment of dismissal was thereafter affirmed by the Circuit Court of Appeals of the United States, Ninth Circuit. (94 Fed. (2d) 491.) This affirmance was made solely upon the ground that the debtor at the time of the filing of its petition was not a farming corporation by reason of the fact that its corporate powers had been suspended for non-payment of state franchise taxes. (94 Fed. (2d) 491.) Following this decision, the bank commenced this last and instant unlawful detainer action to dispossess petitioner from its property holdings.

Petitioner's answer therein denied the bank's allegation as to the ownership of said property and set up the special plea of estoppel arising from the judgment in the first unlawful detainer action heretofore referred to. (102 Cal. App. Dec. 592, 105 Pac. (2d) 607.)

In the trial of this last unlawful detainer action, the trial Court over the objection of petitioner received in evidence the record of the proceedings of the debtor under said Section 75 of the Bankruptcy Act. (102 Cal. App. Dec. 592, 105 Pac. (2d) 607.) Said proceedings were admitted into evidence by the trial Court as purporting to establish the bank's ownership of said property. No other evidence produced at said trial purported to establish such ownership.

Your petitioner objected to the reception of the record of the bankruptcy proceedings upon the fundamental ground that the bankruptcy court, as well as the Circuit Court of Appeals of the United States, Ninth Circuit, had lawfully determined but one issue, namely, that the debtor was not a farming corporation owing to its then corporate status under the laws of California. It was and is petitioner's contention that upon the determination of the foregoing issue the bankruptcy court was without lawful power or jurisdiction to adjudicate any question or issue with respect to the ownership of the property possessed by the petitioner. (102 Cal. App. Dec. 592, 105 Pac. (2d) 607.)

The foregoing contention of petitioner was overruled by the trial Court and the respondent bank had

judgment directing the removal of petitioner from its farming property. This judgment was subsequently affirmed by the District Court of Appeal of the State of California, First Appellate District. (102 Cal. App. Dec., p. 592, 105 Pac. (2d) 607.) Request for rehearing by said District Court of Appeal was denied. Petition for hearing in the Supreme Court of California was likewise rejected. (November 9, 1940.)

The decision of said District Court of Appeal affirming the judgment of the trial Court directing the removal of petitioner from said property rests upon the conclusion of the Court that the issue of the validity of the bank's title to said property had been properly and conclusively determined in the aforesaid debtor's proceedings under Section 75 of the Bankruptcy Act.

In reaching its conclusion that the debtor's proceedings under Section 75 of the Bankruptcy Act were res adjudicata of the paramount issue of ownership tendered in this last unlawful detainer action, the decision of the District Court of Appeal discussed at length the power of the bankruptcy courts under said Section 75. It likewise discussed the jurisdiction of said bankruptcy courts to adjudicate title to property claimed by such debtors as well as the legal significance and effect of the decisions of the United States District Court and of the Circuit Court of Appeals of the United States in this particular proceeding.

In declaring the judgment of said United States District Court to be final on the issue of said title,

said decision of said District Court of Appeal also disregarded the fact that the Circuit Court of Appeals of the United States had affirmed the judgment of dismissal of the debtor's proceedings for the sole reason that petitioner was not a corporation in good standing when it filed its debtor's petition. (94 Fed. (2d) 491.)

From the foregoing conclusions and circumstances arise the substantial federal questions presented in this application.

Such federal questions as the decision of the District Court of Appeal reveals were presented to both the trial Court and to the District Court of Appeal of the State of California. (102 Cal. App. Dec. 592, 105 Pac. (2d) 607.) The opinion of the latter Court likewise discloses that the decision of said federal questions was necessary to the determination of said case and to the rendition of said opinion affirming the ejection of petitioner. (*Lynch v. People of New York, etc.*, 293 U. S. 52, 79 L. ed. 191-193; *Coleman v. Miller*, 303 U. S. 632, 83 L. ed. 1385.)

IV.

SPECIFICATION OF ERRORS.

(A) The District Court of Appeal of the State of California erred in holding that the validity of respondent's title to the property had been conclusively established in petitioner's proceedings under Section 75 of the Bankruptcy Act.

The United States District Court had no jurisdiction to determine said question and its judgment thereon was void and subject to collateral attack.

(B) The said District Court of Appeal erred in holding that in petitioner's proceedings under said Section 75, the question of the ownership of said property became a jurisdictional issue before said United States District Court.

The jurisdiction of said United States District Court ceased with its determination as to the then existing corporate incapacity of petitioner.

(C) The said District Court of Appeal erred in holding that ownership of property is a condition precedent to the right of a farmer to relief under said Section 75.

The purpose of said Section 75 is to provide relief to all farmers. It is an act which should be liberally construed.

(D) The said District Court of Appeal erred in giving unlawful and conclusive effect to the judgment of said United States District Court.

(E) The said District Court of Appeal erred in holding that the decision of the Circuit Court of Appeals, Ninth Circuit, affirmed the judgment of said United States District Court as to the validity of respondent's title to said property because:

Said Circuit Court of Appeals expressly declared that its affirmance of the judgment was upon a distinct and different ground.

(F) The decision of said District Court of Appeal erred in not according the decision of said Circuit Court of Appeals full faith and credit in accordance with Article IV, Section 1, of the Constitution of the United States.

(G) The said District Court of Appeal erred in holding that the findings of said bankruptcy court as to the validity of the bank's title to said property were properly admissible in evidence during the trial of said unlawful detainer action.

(H) The decision of the District Court of Appeal was arbitrary and capricious, contrary to settled principles of law and in violation of the Fourteenth Amendment to the Constitution of the United States in affirming the judgment of the trial Court directing the dispossession of petitioner because:

(1) There was no competent proof of the validity of the bank's title to said property.

(2) The District Court of Appeal's order of affirmance is based upon a void finding of the bankruptcy court.

(3) Said District Court of Appeal failed to recognize valid pleas of estoppel raised by petitioner in the trial court.

(4) The operation and effect given Section 1161 (a) Code of Civil Procedure, by said District Court of Appeal is repugnant to said Fourteenth Amendment to said Constitution.

(5) The construction and application of said Section 75 of the Bankruptcy Act in said decision of the

District Court of Appeal will deprive petitioner of the available rights, privileges and immunities of said section of the Bankruptcy Act.

V.

ARGUMENT.

A. THIS COURT HAS JURISDICTION TO REVIEW THE OPINION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA.

The writ of certiorari requested herein may be properly directed to the District Court of Appeal of California rather than to the Supreme Court of the state. (*Western Union Tel. Co. v. Priesner,* 276 U. S. 254, 48 Sup. Ct. 234, 72 L. ed. 555.)

The decision of the District Court of Appeal of the State of California discloses that the Court discussed at length, Section 75 of the Bankruptcy Act. Several pages of the opinion are in fact devoted to the construction of said section of the Bankruptcy Act, the powers of the bankruptcy court thereunder, and the effect of such proceedings upon the issues of the state Court case.

> "Congress derives its power to enact a bankruptcy law from the federal constitution and the construction of it is a federal question reviewable by certiorari."
>
> *Board of Trade v. Johnson,* 264 U. S. 5, 68 L. ed. 533-536.

It is petitioner's contention that the said District Court of Appeal misconstrued Section 75 of the Bank-

ruptcy Act, as well as the powers of the bankruptcy court thereunder, and misapplied or disregarded the decisions of the United States District Court and the Circuit Court of Appeals in the debtor's proceedings.

> "As the contention is that the ruling below disregarded decrees of a court of the United States, it raises a federal question reviewable under Section 237(b) of the Judicial Code, 28 U. S. C. A. 334(b)." (Citing numerous cases.)
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> *Stoll v. Gottlieb,* 305 U. S. 165, 83 L. ed. 105.

When a petition for certiorari sets forth that such state Court has misconstrued a section of the Bankruptcy Act, the Supreme Court of the United States has jurisdiction to review the decision of such state Court. (*Murray v. Gerrick, et al.,* 291 U. S. 315, 78 L. ed. 821.) As this Court stated therein:

> "In the petition for certiorari it is *asserted* that the state court misconstrued the act of Congress of February, 1928 * * * This court *consequently* has *jurisdiction.*"

B. THE PROCEEDINGS OF THE PETITIONER UNDER SECTION 75 OF THE BANKRUPTCY ACT WERE NOT RES ADJUDICATA AS TO RESPONDENT'S OWNERSHIP OF THE PROPERTY.

In reaching a determination to the contrary, the District Court of Appeal erroneously assumed that the bankruptcy court in such proceedings was required to determine two issues:

> (1) Whether the debtor, petitioner herein, was a farmer when it filed its petition;

(2) Even though it was not a farmer because it had temporarily lost its corporate franchise, whether it was the owner of said property.

Upon such erroneous assumption the District Court concluded that the debtor's proceedings were res adjudicata upon the issue of title to said property, a necessary prerequisite in such state Court case. (1161(a) Code of Civil Procedure.)

Having so concluded, said District Court affirmed the dispossession of petitioner.

Petitioner respectfully submits that the District Court of Appeal misconstrued the lawful powers of the bankruptcy court under the particular circumstances existing in the petitioner's proceedings therein.

The jurisdiction of the United States District Court in such matter ceased with the determination of the first issue, namely, the ascertainment of the fact that petitioner was at that time incapacitated as a corporation to conduct its farming business. As the rule is stated:

> "If it be true that appellant was *not engaged* in farming operations * * * she is not entitled to relief under the act and the court is *without* the *jurisdiction* to entertain the proceedings."
>
> *Davis v. Shackleford,* 91 Fed. (2d) 148-150.

Same effect:

In re Weiss, 10 Fed. Supp. 227-229;
In re Peterson, 8 Fed. Supp. 86;
In re Palma Bros., 8 Fed. Supp. 227-229.

In *In re Peterson,* supra, where it was ascertained that petitioner was not a farmer within the meaning of the section, the Court declared:

> "This testimony which must be accepted as true *conclusively* forecloses the jurisdiction of the court under Section 75 * * *"

In the proceedings taken by the petitioner herein and as the opinion of the Circuit Court expressly declares, the corporation was incapable of conducting farming operations *because* it had failed to pay its franchise tax. This fact, having become evident to the special master, as well as to the United States District Court, the latter had no jurisdiction to make any determination in the proceedings except to order it dismissed.

Manifestly the statute does not require, as a jurisdictional fact, proof that the applicant for relief is the owner of farming property. Subdivision (c) of Section 75 (11 U. S. C. A. 203(c)) identifies the particular person entitled to relief thereunder. It provides:

> "At any time within five years * * * a petition may be filed by *any* farmer * * *"

Subdivision (r) of that section defines a farmer as including:

> "not only an individual who is primarily bona fide engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming."

The beneficent purpose of this act of Congress denies any construction that would limit its application to farmers who are the owners of land.

An applicant for relief under this section of the Bankruptcy Act may be an owner of land or he may be a tenant of land. He may be operating under a cropper's contract or he may be one who is engaged in producing products of the soil upon land in which he has no interest whatsoever.

Such, we submit, is the only effective interpretation to be given to this particular statute.

In any event, the foregoing contentions of petitioner present a question involving the construction of said Section 75, sufficiently substantial to warrant its final determination by this Court.

C. WHERE A FINDING IS UPON AN ISSUE WITHOUT THE JURISDICTION OF THE COURT, THE OPINION OR JUDGMENT OF SUCH COURT IS TO THAT EXTENT VOID.

This is an elementary principle. As to such issue, such judgment concludes nothing.

Lang v. Lang, 182 Cal. 765, 768;

North Carolina Railway Co. v. Storey, etc., 266 U. S. 288, 69 L. ed. 959-962;

Ex parte Sawyer, 124 U. S. 201, 31 L. ed. 402-409;

Chicago B. O. Rly. Co. v. Chicago, 166 U. S. 234, 247, 41 L. ed. 983-988.

In *North Carolina Railway Co. v. Storey, etc.,* supra, the rule is stated:

> "Res adjudicata is only applicable to the point adjudicated, not to the points collaterally under consideration."

In *Chicago B. & O. Rly. Co. v. Chicago,* supra, the Court declared:

> "It is, of course, essential to the validity of any judgment that the court rendering it should have had jurisdiction not only of the parties, but of the subject matter."

In *Ex parte Sawyer,* supra, the following rule is declared:

> "When such court acts without jurisdiction or authority, its judgments and orders are regarded as nullities. They are not voidable, but simply *void.*"

If the jurisdiction of the bankruptcy court in the petitioner's proceedings under said Section 75 ceased with the determination of corporate incapacity, the conclusion of the District Court that the issue of title had become *res adjudicata* was obviously erroneous.

The fundamental error of the District Court of Appeal rests in its misconception of the powers of the bankruptcy court under Section 75 and a misapplication of the lawful effect of the opinion of the United States District Court in said proceedings. But the decision of said District Court of Appeal also misapplied the lawful effect of the decision of the Circuit Court of Appeals in said matter.

D. DECISION OF DISTRICT COURT OF APPEAL MISAPPLIED THE LAWFUL EFFECT OF THE OPINION OF THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES.

As to the meaning of the opinion of the Circuit Court of Appeals, the State District Court of Appeal said:

> "It must be assumed that when the Circuit Court of Appeals affirmed the judgment it became res adjudicata of both issues."

There was no basis for such assumption, the opinion of the Circuit Court expressly stating:

> "We express no opinion on the question of the jurisdiction of the state court to determine the validity of the sale of the property here involved * * * The order of the District Court is affirmed upon the ground that the appellant was not at the time of the filing of the petition a farming corporation." (94 Fed. (2d) 493.)

It will be observed that the decision of the District Court of Appeal discussed at length the affirmance of the judgment and order of the bankruptcy court in the debtor's proceedings by the Circuit Court of Appeals. The conclusion of the District Court of Appeal, succinctly stated, was that the general affirmance of the judgment of said bankruptcy court made it *res adjudicata* as to all issues or controversies involved in the proceedings.

The doctrine announced in the opinion of the District Court of Appeal of the State of California, of course, was based upon the assumption that such issues were properly within the jurisdiction of said bankruptcy court to consider and determine. The gen-

eral affirmance of a judgment gives no force or effect to that portion of it over which a lower Court is without jurisdiction. Such portion of the judgment is void and subject to collateral attack.

Ex parte Sawyer, supra;

Pioneer Land Co. v. Maddux, 109 Cal. 633, 642-643;

Penwell v. Superior Court, 87 Cal. App. 375, 378.

In *Stoll v. Gottlieb,* supra, the Court declared:

> "The court does not have the power by judicial fiat to extend its jurisdiction over matters beyond the scope of the authority granted by its creators."

In *Standard Oil v. Missouri, etc.,* 224 U. S. 272-281, 56 L. ed. 760-767, the rule is declared:

> "Though the court may possess jurisdiction of a cause, it is still limited in its modes of procedure and in the extent and character of its judgment * * * It * * * cannot transcend the power conferred by law."

E. DECISION OF DISTRICT COURT AS TO THE EFFECT OF THE DECISIONS OF UNITED STATES DISTRICT COURT AND CIRCUIT COURT OF APPEALS IS NOT CONTROLLING UPON THIS COURT.

Of course, the opinion of the District Court of Appeal as to the effect of the opinions of said United States District Court and Circuit Court of Appeals is not controlling upon this Court.

> "Provisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grant effective confer jurisdiction upon this (Supreme) court to determine the effect to be given decrees of a court of the United States in state courts." (Citing numerous cases.)
>
> *Stoll v. Gottlieb,* 305 U. S. 165, 83 L. ed. 105.

> "When the language of Congress indicates a policy requiring a broader construction of the statute than the state decisions would give it, federal courts cannot be concluded by them."
>
> *Board of Trade v. Johnson,* 264 U. S. 5, 68 L. ed. 533-536.

Petitioner respectfully submits that under the circumstances existing herein the opinion of the Circuit Court of Appeals was entitled to full faith and credit in the state Court proceedings. (Article 4, Section 1, Constitution of United States; *Supreme Lodge v. Myer,* 265 U. S. 30, 68 L. ed. 885-888; *Hancock National Bank Co. v. Farnum,* 176 U. S. 640-645, 44 L. ed. 619-621; *Embree v. Palmer,* 107 U. S. 3, 9, 27 L. ed. 346.)

Obviously the Circuit Court of Appeals was as conversant with the records of the bankruptcy court in petitioner's proceedings as were the state Courts. If the jurisdiction of the bankruptcy court in such proceedings and under the circumstances existing in petitioner's case extended to the determination of the title to this valuable ranch property, the Circuit Court of Appeals would unhesitatingly have declared so.

That it withheld its approval and refused to validate the foreclosure proceedings should have prompted the state Court to accord full respect to the opinion of the appellate division of the federal Court. Respondent should have lawfully been required to establish its title upon more stable grounds than the unaffirmed decision of the bankruptcy court in these particular proceedings.

F. THE OPINION OF THE DISTRICT COURT OF APPEAL WAS ARBITRARY AND CAPRICIOUS, CONTRARY TO SETTLED PRINCIPLES OF LAW AND IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The opinion of said District Court of Appeal discloses also that the plea of estoppel raised by petitioner in the trial Court was rejected. This plea was predicated upon the fact that in the first and second unlawful detainer actions, judgment was had by the petitioner, the defendant in said actions. If the proof of title was a proper element in the last unlawful detainer action, it was, of course, a factor involved in the preceding actions. If so, such question had been previously adjudicated in favor of the petitioner herein.

Aside from this situation, the operation and effect of Section 1161 (a) of the Code of Civil Procedure, as sanctioned by the state Courts in this last unlawful detainer action; resulted, we believe, in an arbitrary and capricious deprivation of the petitioner's property. This deprivation was in violation of the rights

of petitioner under the Fourteenth Amendment to the Constitution of the United States. (*Williams v. Tooke* (C. C. A.), 108 Fed. (2d) 758; *Postal Telegraph v. Newport,* 247 U. S. 464, 38 Sup. Court 566, 62 L. ed. 1215; *Ward, etc. v. Krunsky,* 259 U. S. 503, 66 L. ed. 1033; *Board of Trade v. Johnson,* supra; *Board of Trade v. Wilson,* 243 Fed. 332-336.)

In *Williams v. Tooke,* supra, the rule is declared:

> "If a case between private parties is arbitrarily and capriciously decided in violation of settled principles of law contrary to undisputed facts, though the court has jurisdiction over the suit, the judgment may be in violation of the Fourteenth Amendment." (*Postal Telegraph Co. v. Newport,* 247 U. S. 464, 62 L. ed. 1215.)

CONCLUSION.

The petitioner finds itself in this paradoxical situation as the result of the prolonged litigation referred to herein. It was the owner of property indisputably of exceptional value. Foreclosure sale thereof under a trustee's deed is alleged to have occurred within one year from the time of the execution of its promissory note to respondent. The validity of that sale is still subject to serious question. No action by respondent was ever commenced to perfect or establish its title thereto. Only the bankruptcy court purported to make a finding as to ownership. The Circuit Court of Appeals expressly refrained from approving the finding of the bankruptcy court on the issue of title or the jurisdiction of said Court to determine such issue

in this particular debtor's proceeding. The decision of the Circuit Court of Appeals implied that the determination of such issue was a matter for the state Courts. The state Courts nevertheless did not so determine such issue but declared themselves concluded by the finding of the bankruptcy court.

As a result of the foregoing situation, petitioner must be unjustly and unlawfully deprived of its property and any remedies, privileges or immunities available under Section 75 of the Bankruptcy Act unless it is accorded the aid and intervention of this Honorable Court.

It is respectfully submitted that a writ of certiorari should be issued out of and under the seal of this Court directed to the District Court of Appeal of the State of California, First Appellate District, to the end that the decision and judgment of said District Court of Appeal may be reviewed and that said decision and judgment of said Court may be reversed by this Honorable Court, and for such other relief as may be meet and proper.

Dated at San Francisco, California, this 12th day of February, 1941.

GEORGE THOMAS DAVIS,
Counsel for Petitioner.